IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 796 of 2007(T)

ELE. OP.3/2005 of II ADDL.M.C.,NEYYATTINKARA

.....

PETITIONER:

RENJITHA,
D/O.DAVEED, SAROJA BHAVAN,
KUSAKKOTTUKONAM, THOZHUKKAL DESOM,
PERUMPAZHUTHOOR VILLAGE.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

SUKUMARI,
W/O.MOHANAN, THATTAMVILA VEEDU,
THAZHUKKAL, PERUMPAZHUTHOOR VILLAGE.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 796 OF 2007

Dated 10th January 2007

J U D G M E N T

Petitioner is the successful candidate in the election conducted in Ward No.XIX of Neyyattinkara Municipality. Respondent filed Election O.P.3/05 before Additional Munsiff Court, Neyyattinkara to set aside the election of petitioner. She also sought a declaration that she is the elected candidate. Petitioner did not file a recrimination petition within the period. Subsequently I.A.5115/06 was filed to receive recrimination petition. It was objected to by respondent contending that it is barred by time. Under Ext.P5 order learned Munsiff dismissed the application. This petition is filed under Article 227 of Constitution of India challenging that order.

2. Contention of petitioner is that though recrimination petition was not filed within the period, learned Munsiff should have received the recrimination petition in view of Section 29 (2) of Limitation Act. Learned counsel appearing for

petitioner was heard. Argument of learned counsel appearing for petitioner was that under Section 29 (2) learned Munsiff should have received the recrimination petition.

3. An identical question was considered by this court in Danam v. Purushothaman Nair (W.P.(C) No.14571/06). Though it relates to recrimination petition filed under Rule 99 of the Kerala Panchayat Raj Act, question whether Section 29(2) of Limitation Act would apply was elaborately considered in the light of the decision of the Apex Court in **Fairgrowth Investments Ltd. v. Custodian (2004 (11) SCC 472, Hukumdev Narain Yadav v. Lalit Narain Mishra (AIR 1974 SC 480), Shaik Saidulu Alias Saida v. Chukka Yesu Ratnam and others (2002 (3) SCC 130).** Following the decision of the Apex court in **Union of India v. Popular Construction Co.(2001 (8) SCC 470)** it was held that exclusion also includes exclusion provided under Section 29(2) by necessary implication and proviso to sub section 2 of Section 113 of Panchayat Raj Act enables appellate court to entertain an appeal after the period of thirty days prescribed for preferring an appeal for sufficient reasons and by

implication the operation of provisions of Limitation Act is therefore excluded and therefore Section 29(2) cannot be invoked to receive a recrimination petition which was filed beyond the period of limitation.

4. Under Section 189 of Municipalities Act a right of appeal is provided with a further provision to condone delay on satisfying sufficient cause. In such circumstances, even in respect of recrimination petition filed under Municipalities Act, by implication operation of Limitation Act is excluded. Therefore there is no infirmity in Ext.P5 order refusing to receive the recrimination petition, as it was filed beyond the period provided under Section 175 of Municipalities Act.

Writ petition is dismissed. Dismissal of this petition will not affect the right of the petitioner to raise available contentions in the election petition.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.